



State of New Jersey

DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES
P.O. Box 712
Trenton, NJ 08625-0712

CHRIS CHRISTIE
Governor

ELIZABETH CONNOLLY
Acting Commissioner

KIM GUADAGNO
Lt. Governor

MEGHAN DAVEY
Director

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES
DIVISION OF MEDICAL ASSISTANCE
AND HEALTH SERVICES

A.G.,

PETITIONER,

ADMINISTRATIVE ACTION

v.

FINAL AGENCY DECISION

DIVISION OF MEDICAL ASSISTANCE

OAL DKT. NO. HMA 11024-2015

AND HEALTH SERVICES AND

MORRIS COUNTY BOARD OF

SOCIAL SERVICES,

RESPONDENTS.

As Director of the Division of Medical Assistance and Health Services, I have reviewed the record in this case, including the Initial Decision, the OAL case file and the documents filed below. No exceptions were filed in this matter. Procedurally, the time period for the Agency Head to file a Final Agency Decision is February 29, 2016 in accordance with an Order of Extension.

The matter arises regarding Petitioner's Medicaid eligibility date. Petitioner resided in an assisted living (AL) facility since August 2014. She applied for benefits in January 2015. Morris County determined that Petitioner had transferred resources in

the amount of \$164,228. During the hearing that number was later adjusted to \$141,228, which amounts to a transfer penalty of 1 year, 2 months and 4 days. Petitioner does not contest the penalty. Rather she is seeking to start the transfer penalty in January 1, 2015 rather than April 1, 2015.<sup>1</sup>

As of December 1, 2014, New Jersey received federal authority to cease covering nursing home services under Medically Needy and permit applicants, who needed institutional level of care in a nursing facility, an AL facility or home and had income in excess of \$2,163 (currently \$2,199) to place the excess income in a Qualified Income Trust (QIT), also known as a Miller Trust, and obtain Medicaid benefits. See 42 U.S.C. § 1396p(d)(4)(B). By placing the excess income in a QIT, Morris County is able to exclude that amount from the income limit. Petitioner was found clinically eligible as of April 2015 which was the first month she could be found eligible so as to start the transfer penalty.

The Initial Decision upheld the April 2015 eligibility date, finding that the clinical eligibility must align with meeting the financial standards. For Petitioner, this occurred during the month of April and would set her eligibility as of April 1, 2015. I find no reason to disturb this finding.

However, the reduction of Petitioner's penalty is not permitted under federal law. See 42 U.S.C. § 1396p(c)(2)(C). Any reduction of the penalty imposed for transferred funds is predicated on whether "[a] satisfactory showing is made to the state (in accordance with regulations promulgated by the Secretary) that (i) the individual intended to dispose of the assets either at fair market value, or for other valuable consideration, (ii) the assets were transferred exclusively for a purpose other than to

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<sup>1</sup> Morris County incorrectly set the eligibility date as April 6, 2015.

qualify for medical assistance, or (iii) all assets transferred for less than fair market value have been returned to the individual." 42 U.S.C. § 1396p(c)(2)(C) (emphasis added). Therefore, partial returns are not permitted to modify the penalty period and, absent a return of all the assets, the penalty continues uninterrupted. Med-Com 10-06. See C.W. v. DMAHS and Union County Division of Social Services, A- 2352-13T2, decided August 31, 2015 (finding that arguments for the partial reduction of a ten year, four month and thirteen day penalty "lacked any legal support").

Thus, I FIND that April 1, 2015 is the correct date for Petitioner's Medicaid eligibility and ADOPT that portion of the Initial Decision. Due to the clear statutory language, I hereby REVERSE the Initial Decision with regard to the reduction in the transfer penalty and REINSTATE the penalty based on the transfer of \$164,228.

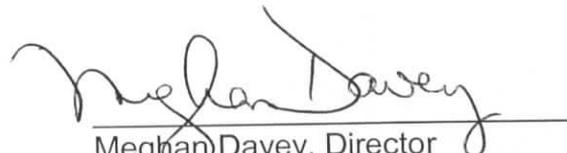
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THEREFORE, it is on this <sup>23<sup>rd</sup></sup> day of FEBRUARY 2016,

ORDERED:

That the Initial Decision is hereby ADOPTED with regard to Petitioner's April 1, 2015 eligibility date; and

That the Initial Decision is REVERSED to reflect the transferred amount to be \$164,228 and the penalty shall run for 1 year, 4 months and 6 days.

  
Meghan Davey, Director  
Division of Medical Assistance  
and Health Services